

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Fitzpatrick, Judges Bumgardner and Felton  
Argued at Salem, Virginia

PERRY SYLVESTER WRIGHT

v. Record No. 1562-01-3

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION\* BY  
CHIEF JUDGE JOHANNA L. FITZPATRICK  
OCTOBER 29, 2002

FROM THE CIRCUIT COURT OF THE CITY OF DANVILLE  
James F. Ingram, Judge Designate

Joseph R. Winston, Special Appellate Counsel  
(Public Defender Commission, on briefs), for  
appellant.

Jennifer R. Franklin, Assistant Attorney  
General (Jerry W. Kilgore, Attorney General,  
on brief), for appellee.

On June 1, 2001, the trial court revoked a portion of Perry Sylvester Wright's (appellant) suspended sentences for two prior convictions because he violated his probation requirement of "good behavior." Appellant contends that the trial court erred in computing the time available for revocation. We agree that the trial court made a clerical error and remand for a correction pursuant to Code § 8.01-428.

On March 2, 2001, appellant was convicted of unlawful wounding. Pursuant to this conviction, the Commonwealth sought revocation of two previously suspended sentences for a 1987

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\* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

arson conviction and a 1989 malicious wounding conviction. On June 1, 2001 the trial court imposed a combined fifteen-year sentence for both offenses, with fifteen years suspended and one year eight months to serve. Appellant contends that this order failed to give him proper credit for time he had already served on several earlier revocations.<sup>1</sup>

At oral argument, counsel for appellant and the Commonwealth conceded that the remaining sentence available for revocation at the time of the June 1, 2001 hearing was thirteen years, four months rather than fifteen years as stated in the final revocation order. Once the trial court imposed the one year eight month sentence, the total time available for further suspension was eleven years, eight months. Accordingly, we remand the case to the trial court for entry of a new sentencing order pursuant to Code § 8.01-428 to correct the clerical error in the June 1, 2001 sentencing order.

Affirmed and remanded for entry of a corrected final order.

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<sup>1</sup> While we do not address the propriety of combining two separate cases for sentencing, appellant's contention that the trial court erred by imposing a combined sentence as to both offenses is barred by Rule 5A:18. We note that no objection was made to combining the revocation time on the arson and malicious wounding convictions at an earlier November 2000 revocation hearing nor at the June 1, 2001 hearing. Thus the combined sentence is now the law of the case. See also Rule 1:1; Simmers v. Commonwealth, 11 Va. App. 375, 379, 398 S.E.2d 693, 695 (1990) (defendant may not collaterally attack a voidable sentencing order after twenty-one days).